

Resolution A.931(22)

Adopted on 29 November 2001 (Agenda item 10)

GUIDELINES ON SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF
CONTRACTUAL CLAIMS FOR PERSONAL INJURY TO OR DEATH OF SEAFARERS

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**GUIDELINES ON SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF
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OR DEATH OF SEAFARERS**

THE ASSEMBLY OF THE INTERNATIONAL MARITIME ORGANIZATION AND THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE,

NOTING the importance in the plan of action of the International Maritime Organization (IMO) of the human element, which is central for the promotion of quality shipping, and the core mandate of the International Labour Organization (ILO), which is to promote decent conditions of work,

RECALLING the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up as well as the relevant international labour standards applicable to maritime employment,

RECALLING ALSO the generally accepted principles of international human rights applicable to all workers,

NOTING the Convention on Limitation of Liability for Maritime Claims, 1976, as amended, the International Convention on Maritime Liens and Mortgages, 1993, and the International Convention on Arrest of Ships, 1999,

NOTING ALSO that in a significant number of cases there are serious problems in regard to the handling of seafarers' claims for personal injury or death, which involve a human and social dimension,

RECOGNIZING that there is a need to recommend minimum international standards for the responsibilities of shipowners in respect of contractual claims for personal injury to or death of seafarers,

CONSIDERING that shipowners, in discharging their responsibilities for providing safe and decent working conditions, should have effective arrangements for the payment of compensation for death or personal injury,

CONSIDERING ALSO that, given the global nature of the shipping industry, seafarers need special protection,

CONSIDERING FURTHER that full and prompt contractual compensation should be paid without prejudice to any other legal rights that seafarers or their next of kin may have,

CONCERNED that, if shipowners do not have effective insurance cover or other effective forms of financial security, seafarers are most unlikely to obtain full and prompt compensation,

NOTING that the Guidelines represent a valuable contribution to the objectives of eliminating the operation of sub-standard ships and enhancing the social protection of seafarers,

RECOGNIZING also that the present resolution does not call for the adoption of additional mechanisms where national law already meets or exceeds the provisions of the Guidelines,

CONSIDERING that IMO Assembly Resolution A.898(21) on Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims did not directly address contractual claims for personal injury to or death of seafarers, but was concerned to ensure that shipowners have effective insurance cover or other effective forms of financial security for maritime claims,

CONVINCED that the adoption of guidelines is an appropriate interim measure to ensure payment of compensation for personal injury to and death of seafarers,

1. ADOPT the Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury to or Death of Seafarers set out in the annex to the present resolution;
2. REQUEST Member Governments to bring this resolution and Guidelines to the attention of shipowners and seafarers and their respective organizations;
3. INVITE Member Governments to ensure that shipowners comply with the Guidelines;
4. INVITE the IMO Assembly and the ILO Governing Body to consider other appropriate action for longer-term sustainable solutions to address the problems covered by these Guidelines;
5. REQUEST the IMO Assembly and the ILO Governing Body to keep the Guidelines under review and to amend them as necessary; and
6. INVITE Member Governments to note that these Guidelines will take effect on 1 January 2002.

ANNEX

GUIDELINES ON SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF CONTRACTUAL CLAIMS FOR PERSONAL INJURY TO OR DEATH OF SEAFARERS

1 INTRODUCTION

1.1 The purpose of the Guidelines is to assist States, when establishing their national requirements, to identify the most crucial issues relating to the payment to seafarers of contractual claims for personal injury or death.

1.2 The Guidelines recommend measures to be implemented by shipowners to ensure that there is an effective insurance cover or other financial security to provide full and prompt payment of such claims. The Guidelines also contain recommendations for certification and provide a model receipt and release form for such claims.

1.3 These Guidelines are also suitable for fishing vessels.

2 DEFINITIONS

2.1 For the purposes of these Guidelines unless expressly provided otherwise:

- .1 *Shipowner* means the owner of the ship or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities;*
- .2 *Seafarer* means any person who is employed or engaged in any capacity on board a seagoing ship;
- .3 *Personal injury* means any disease or impairment of a seafarer's physical or mental condition arising out of or in connection with employment of the seafarer;
- .4 *Claims* means valid contractual claims for compensation for personal injury or death at levels provided for within the terms and conditions of employment of seafarers;
- .5 *Insurance* means effective insurance or other forms of financial security to meet claims against shipowners which comply with the functional criteria set out in these Guidelines; and
- .6 *Insurer* means any person or entity providing insurance for a shipowner.

* Article 1(c) of the Recruitment and Placement of Seafarers Convention 1996 (No.179) and Regulation IX/1.2 of SOLAS 1974 as amended.

3 SCOPE OF APPLICATION

3.1 Shipowners are urged to comply with these Guidelines in respect of all seagoing ships.

3.2 These Guidelines do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

4 SHIPOWNERS' RESPONSIBILITIES

4.1 Shipowners, in discharging their responsibilities to provide for safe and decent working conditions, should have effective arrangements for the payment of compensation for death or personal injury. Shipowners should arrange for their ships effective insurance cover that complies with these Guidelines.

4.2 Shipowners should take steps, when a claim arises, for its prompt payment. Shipowners should also ensure that all valid contractual claims should be paid in full. There should be no pressure, by their representative or by the representative of their insurers, for a payment less than the contractual amount or for a payment which in any way conflicts with these Guidelines.

4.3 Where the nature of the personal injury makes it difficult for the shipowner to make a full payment of a claim, an interim payment should be made to the seafarer so as to avoid undue hardship.

4.4 Shipowners should display on board contact details of the persons or entity responsible for handling claims covered by these Guidelines.

5 PAYMENT OF CLAIMS

5.1 Notwithstanding provisions of national law, the parties to the payment of a contractual claim are recommended to use the Model Receipt and Release Form attached as an Appendix to this Annex.

6 INSURANCE COVER

6.1 The functional criteria for insurance for claims should include, *inter alia*, that:

- .1 the contractual compensation, as provided by the contract of employment and without prejudice to (2) below, should be paid in full and without delay;
- .2 the seafarer should receive payment without prejudice to other legal rights, but such payment may be offset against any damages resulting from any action in tort arising from the same incident;
- .3 the shipowner should ensure that a certificate is provided indicating the period of cover of the insurance;
- .4 the seafarer should receive prior notification if the insurance is to be cancelled and be notified immediately if it is not to be renewed; and
- .5 the insurance should provide for the payment of all claims arising during the period for which the certificate is valid.

7 CERTIFICATES

7.1 Shipowners should ensure that their ships have on board a certificate issued by the insurer. It should be posted in a prominent position in the seafarers' accommodation.

7.2 Where more than one insurer provides cover for claims, certificate from each insurer is required.

7.3 As a minimum, the certificate should include:

- .1 name of the ship;
- .2 port of registry of the ship;
- .3 call sign of the ship;
- .4 IMO number of the ship;
- .5 name of the provider of the financial security;
- .6 place of business of the provider of the financial security;
- .7 name of the shipowner;
- .8 period of validity of the financial security; and
- .9 an attestation that the financial security meets the recommended standards set out in these Guidelines.

APPENDIX
MODEL RECEIPT AND RELEASE FORM
FOR CONTRACTUAL CLAIMS

Ship:

Incident:

Seafarer/Legal heir and/or Dependant:

Shipowner

I, [Seafarer] [Seafarer's legal heir and/or dependant]* hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Shipowner's obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of my/the Seafarer's employment and I hereby release the Shipowner from its obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to my/the Seafarer's legal heir and/or dependant's right to pursue any claim at law in respect of negligence, tort or any other legal redress available and arising out of the above incident.

Dated:

Seafarer/Legal heir and/or Dependant:

Signed:

For acknowledgement:

Shipowner/Shipowner representative: Signed

Insurer/Insurer representative: Signed

* delete as appropriate

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